



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-03

Subject: Suitable Food and Lodging at Designated Terminals;
Hours of Service Act Interpretation

From: Edward W. Pritchard
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To: Regional Administrators

The Hours of Service Act requires that, in order for a period of interim release to be valid, it must be for a period of 4 or more hours at a designated terminal. The intent of Congress in enacting and amending the designated terminal provision was to assure that railroad employees in train and engine service should be afforded an opportunity for meaningful rest. This provision requires that suitable facilities for food and lodging be available in connection with a release at a designated terminal.

In that connection the apparent basis for references in the legislative history to "suitable facilities for food" was to assure the availability of nutritionally adequate and palatable food which could be consumed with appropriate utensils in a reasonably clean environment.

Another issue is whether it is necessary that facilities for food be available continuously throughout the rest period. The legislative history of the Act nowhere implies such a burden; indeed, it assumes that much of the rest period will be used for sleeping. As long as suitable facilities for food are available when needed for nutritional purposes (i.e., normally at the beginning and end of rest period), an opportunity for meaningful rest has been provided in keeping with the purposes of the Act. For instance, if a crew reaches its destination at 12 midnight and immediately obtains an adequate meal, with the expectation of obtaining breakfast just before returning to duty at 8 a.m. the next morning, the fact that food is unavailable between 1 a.m. and 7 a.m. would be irrelevant to the fitness of the crew.

The suitability of canned, prepackaged, and frozen fast-foods such as canned soup, cold or microwave sandwiches, and frozen pizza depends on the overall circumstances involved, including the length of the work or rest time during which such items are the only food available. Disputes about the relative desirability of various types of meals, all of which have nutritional value, can best be handled through collective bargaining.

As for transportation to eating facilities, the legislative history suggests that transportation must be furnished if the restaurant is beyond a reasonable walking distance. But that is not to say that the railroad must pay for the transportation-only that it be made available. If, for instance, the railroad provides a taxi, it is a matter of collective bargaining, not railroad safety, as to whether the railroad or the employee pays the fare.

The Act requires only that suitable facilities for food and lodging be available. The Act does not indicate who must pay for the accommodations. Railroad labor and management may negotiate an agreement for the payment of lodging or meals through the collective bargaining process.

Section 2 of the Act requires that railroad-provided sleeping quarters, including crew quarters, camp or bunk cars, and trailers must afford train and engine service employees an opportunity for rest, free from interruptions caused by noise under the control of the railroad, in clean, safe, and sanitary quarters. FRA is responsible for the administration of that provision, as well.

Questions have arisen with regard to categorizing time spent deadheading at away-from-home terminals. If, as we construe the Act, Congress did not intend that commuting time be considered time on-duty at home terminals, Congress had similar intent at away-from-home terminals. However, since travel time at away-from-home terminals is usually outside employee control, Congress presumably did not intend such commuting would exceed a reasonable period. Given Congressional silence on what a "reasonable time" might be, FRA was forced to define one. FRA solicited comments from representatives of rail management and labor, and after analysis established 30 minutes as a reasonable "rule of thumb" commute period for away-from-home terminal situations. Therefore, at away-from-home terminals:

- If 30 minutes or less, time spent traveling to lodging after final release or time spent traveling from lodging to duty at the conclusion of rest is considered time off-duty.
- When travel time to lodging from point of final release exceeds 30 minutes, the entire travel time is considered as limbo time (neither time on-duty nor time off-duty). In addition, a travel period from lodging to a duty point that exceeds 30 minutes is considered time on-duty.

Another aspect of the problem deals with time spent awaiting the preparation of accommodations at a lodging facility or time spent awaiting transportation to lodging after final release. Both such situations must be included in "travel to lodging" time computations. The rationale is the same: such time is really not time on-duty, but it is also not time available for rest (except, of course, for the 30-minute commuting allowance discussed above).

The total disappearance of the allowance for commuting time at away-from-home terminals in instances where travel exceeds 30 minutes provides an incentive to minimize such travel which helps ease the effects of cumulative fatigue individuals working irregular schedules frequently encounter.

Should a crew decide to have dinner across the street from their final release point (away-from-home terminal) before being transported to the lodging facility, absent any special circumstances, FRA would typically consider this as a discretionary action by the employees. As such, their rest time would commence at the point they voluntarily left the away-from-home terminal for dinner, in lieu of being transported to the lodging facility to rest.

It should be noted that transporting employees to facilities at some distance from the designated terminal does not violate the Hours of Service Act. A violation occurs in this situation only if the employees are given an inadequate number of consecutive hours off-duty when released at a designated terminal.

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